

HOUSE BILL 2837  
By Sands

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 6, to license public insurance adjusters.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The general assembly finds that widespread abuses plague the unregulated business of public insurance claims adjusting and has determined that, in the best interest of Tennessee's citizens, such business requires regulation.

SECTION 2. Tennessee Code Annotated, Title 56, Chapter 6, is amended by adding the following as a new part to be appropriately designated:

Section \_\_\_\_.

(a) This part shall apply to all public insurance adjusters as defined in the following subsection.

(b) As used in this part, unless the context clearly otherwise requires:

(1) "Adjusting insurance claims" means representing an insured with an insurer for compensation, and while representing that insured either negotiating values, damages or depreciation, or applying the loss circumstances to insurance policy provisions.

(2) "Public insurance adjuster" means a person engaged in the business of adjusting insurance claims. An employee of an insurer admitted to transact insurance under this title shall not be considered a public insurance adjuster.

(3) "Compensation" shall include, but need not be limited to, the following:

(A) Any assignment of insurance proceeds or a percentage thereof;

(B) Any agreement to make repairs for the amount of the insurance proceeds payable; or

(C) Assertion of any lien against insurance proceeds payable.

(4) "Person" means any natural person or business entity of any type.

(5) "Commissioner" means the commissioner of commerce and insurance.

(6) "Registered Firm" means a person registered with the commissioner under subsection (g).

(c)

(1) No person may engage in the business of adjusting insurance claims, nor advertise, solicit or hold himself or herself out to be a public insurance adjuster, nor attempt to obtain a contract for public adjusting services, unless licensed or registered in accordance with the provisions of this part, except that the provisions of this section shall not apply to a person admitted to the practice of law in this state, to a licensed insurance agent adjusting loss or damage under a policy within his control or to a marine surveyor or average adjuster.

(2) In addition to any other penalty set forth in this part, any person violating subdivision (1) of this subsection shall be guilty of a Class A misdemeanor, and any person misappropriating or converting any monies

collected as a public insurance adjuster, whether licensed or not, shall be guilty of a Class C felony.

(d)

(1) Each application for a public insurance adjuster license shall be made on a form specified by the commissioner. The application shall be signed by the applicant and shall contain the applicant's declaration under penalty of refusal, suspension or revocation of the public insurance adjuster license, that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief. Before approving the application, the commissioner shall be satisfied that the applicant is an individual at least eighteen (18) years of age, and is competent, trustworthy and of good business reputation.

(2) Applicants for a public insurance adjuster license shall pass a written examination. The examination shall reasonably test the knowledge of the applicant concerning the applicable insurance laws and rules and regulations of the commissioner and the duties and responsibilities of a public insurance adjuster. All examinations provided for by this part shall be conducted under rules and regulations prescribed from time to time by the commissioner, and the commissioner may make such arrangements as may be appropriate, including contracting with an outside testing service for administering such examinations. Any charges assessed by any such testing service for administering such examinations shall be paid directly by the individual applicants.

Each person subject to an examination shall at the time of request for examination enclose with the application a non-refundable application fee made payable to the commissioner as provided in subsection (m), plus a separate remittance, if applicable, made payable to the designated testing service for the

total of such fees as the testing service charges for each of the various services being requested by the applicant. In the event an applicant appears and fails to pass, such person shall not be entitled to any refund and shall be required to submit a new request for examination together with all of the requisite fees before being rescheduled at a later date.

(3) An applicant who becomes a resident of this state and who has filed with the commissioner certification by a public official having supervision of public insurance adjusters in the prior state of residency evidencing that the applicant has passed a written examination and has held a public insurance adjuster license in good standing for the prior twenty-four (24) months is not required to complete the examination required by paragraph (2). However, the commissioner may require the applicant to take that portion of the examination pertaining to Tennessee law and rules and regulations of the commissioner.

(4) The commissioner may issue a public insurance adjuster license to any applicant who is not a Tennessee resident without an examination only if:

(A) The applicant holds a comparable license from his or her state of residence;

(B) The applicant's state of residence accepts Tennessee residents for licensing;

(C) The state in which the applicant resides requires no examination of Tennessee resident public insurance adjusters; and

(D) The public official having supervision of public insurance adjusters in the applicant's state of residence certifies that the applicant has passed a written examination.

(5) The commissioner may issue a public insurance adjuster license to any applicant who is not a Tennessee resident and who cannot meet the

requirements of paragraph (4) if the applicant passes a written examination in Tennessee.

(e)

(1) The commissioner shall issue a public insurance adjuster license to an applicant who has:

(A) Met the requirements of subsection (d);

(B) Paid the fee as set forth in subsection (m); and

(C) Filed with the commissioner a bond as prescribed in subsection (f).

(2) Every public insurance adjuster license shall remain in effect for one (1) year from the date of its issuance.

(3) Each public insurance adjuster license shall contain the name, residence address, and personal identification number of the public insurance adjuster, the date of issue, general conditions relative to expiration or termination and any other information the commissioner considers proper.

(4) The holder of a public insurance adjuster license shall notify the commissioner, in writing, of a change of residence address within thirty (30) days of such change.

(5) Each public insurance adjuster license shall remain in effect as long as the holder of the license maintains in force and effect the bond required by subsection (f) and pays the annual fee required by subsection (m) by the date due as prescribed by the commissioner, unless the license is revoked or suspended pursuant to subsection (k).

(f) Every applicant for a public insurance adjuster license shall file a bond, in a form approved by the commissioner and executed by a surety company authorized to do business in this state, in favor of the State of Tennessee and payable to any party

injured under the terms of the bond. The bond shall be filed with the application for a public insurance adjuster license and shall remain in force while the applicant is licensed. The bond shall be continuous in form and in the amount of fifty thousand dollars (\$50,000). The bond shall be conditioned upon full accounting and due payment, to the person entitled thereto, of funds coming into the public insurance adjuster's possession incident to a transaction under his or her license. The commissioner shall be notified by the surety bond company thirty (30) days in advance of any cancellation of the bond. A public insurance adjuster license shall automatically terminate when a bond is not in force.

(g)

(1) (A) No person may employ one (1) or more public insurance adjusters in their professional capacity, other than for the purpose of using their professional services to negotiate or adjust such person's own losses and insurance claims, unless such person is registered with the commissioner under paragraph (2) of this subsection.

(B) No public insurance adjuster may form or participate in any association, partnership or other business entity with any other public insurance adjuster for the purpose of engaging in the business of adjusting insurance claims, unless such business entity is registered with the commissioner under paragraph (2) of this subsection.

(2) To become a registered firm, a person must submit to the commissioner an application, on a form specified by the commissioner, and the fee required by subsection (m). The commissioner may require documents reasonably necessary to verify the information contained in the application.

(3) Each registered firm must notify the commissioner, in writing, of any change in its business address within thirty (30) days of such change.

(4) Each registered firm must notify the commissioner of each public insurance adjuster who is a member, officer, director or employee of the registered firm, and report any changes in such status of any such public insurance adjuster to the commissioner within thirty (30) days thereof.

(5) Each registered firm shall appoint one (1) or more public insurance adjusters who is an officer, director or member of the firm to be responsible for the compliance of the registered firm with the laws of this state and the rules and regulations of the commissioner. The registered firm shall be responsible for the actions of its officers, directors, members and employees.

(6) Each registered firm which, for any of the causes listed in subsection (k), terminates its relationship with a public insurance adjuster who is an officer, director, employee or member of the registered firm shall notify the commissioner, in writing, within thirty (30) days of such termination of the specific reasons for such termination. The registered firm shall provide the commissioner with information, documents, records or statements pertaining to the termination. Any materials provided may be used by the commissioner in any action taken pursuant to paragraph (1). There shall be no liability on the part of, nor any cause of action against, the commissioner or the registered firm, or any authorized representative of either, for any statement made or materials provided pursuant to this paragraph.

(7) The commissioner shall terminate any registration that does not comply with the requirements of this part.

(h)

(1) A public insurance adjuster shall not provide services until a written contract with the insured has been executed, on a form filed with and approved by the commissioner. At the option of the insured, any such contract that is

executed shall be voidable for seven (7) days after execution. The insured may void the contract by notifying the public insurance adjuster in writing by (i) registered or certified mail, return receipt requested, to the address shown on the contract; or (ii) personally serving the notice on the public insurance adjuster.

(2) The written contract required by paragraph (1) shall constitute the entire agreement between the public insurance adjuster and the insured. A copy of the contract shall be given to the insured when the contract is executed. Such contract forms may not include any hold harmless agreement which provides indemnification to the public insurance adjuster by the insured for liability resulting from the public insurance adjuster's negligence, nor any power-of-attorney by which the public insurance adjuster can act in the place and instead of the insured.

(3) The written contract required by paragraph (1) shall disclose in clear language and bold print the following:

(A) Identification of the public adjuster as an independent party not affiliated with an insurance company;

(B) The public insurance adjuster's fee for services. If the public insurance adjuster fee is a contingency fee, the percentage shall be disclosed; and

(C) That the public insurance adjuster fee is paid out of the loss settlement and not paid by the insurer in addition to the provable loss.

(i)

(1) A public insurance adjuster may not represent that he or she is a representative of an insurance company, a fire department, or the state of Tennessee, or that he or she is a fire investigator, or that his or her services are required for the insured to submit a claim to the insured's insurance company, or



that he or she may provide legal advice or representation to the insured. A public insurance adjuster may represent that he or she has been licensed by the state of Tennessee.

(2) A public insurance adjuster may not agree to any loss settlement without the insured's knowledge and consent.

(3) If the public insurance adjuster refers the insured to a contractor, the public insurance adjuster warrants that all work will be performed in a workmanlike manner and conform to all statutes, ordinances, and codes. Should the work not be completed in a workmanlike manner, the public insurance adjuster shall be responsible for any and all costs and expense required to complete or repair the work in a workmanlike manner.

(4) Where proceeds paid by an insurance company are paid jointly to the insured and the public insurance adjuster, the public insurance adjuster shall release such portion of the proceeds which are due to the insured within thirty (30) calendar days after the public insurance adjuster's receipt of the insurance company's check, money order, draft, or release of funds. If the proceeds are not so released to the insured within thirty (30) calendar days, the public insurance adjuster shall provide the insured and the department of commerce and insurance with a written explanation of the reason for the delay.

(5) A public insurance adjuster may not propose or attempt to propose to any person that the public insurance adjuster represent that person while a loss-producing occurrence is continuing nor while the fire department or its representatives are engaged at the damaged premises nor between the hours of 7:00 p.m. and 8:00 a.m.

(6) A public insurance adjuster contingency fee shall not exceed ten percent (10%) of the loss settlement under any circumstances.

(7) A public insurance adjuster may not advance money or any valuable consideration, except emergency services or the commencement or repairs, to an insured pending adjustment of a claim.

(8) A public insurance adjuster may not provide legal advice or representation to the insured, or engage in the unauthorized practice of law.

(j)

(1) All public insurance adjusters shall maintain a complete record of each of their transactions as a public insurance adjuster. The records required by this section shall include:

(A) Name of the insured;

(B) Date, location and amount of loss;

(C) Copy of the contract between the public insurance adjuster and insured;

(D) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;

(E) Itemized statement of the insured's recoveries;

(F) Name of the public insurance adjuster who executed the contract; and

(G) Name of the attorney representing the insured, if applicable, and the name of the representative of the insurance company.

(2) Records shall be maintained for at least three (3) years after the termination of the transaction with an insured and shall be open to examination by the commissioner at any time.

(3) A public insurance adjuster shall not divulge information regarding any insured without written consent from the insured, except that the public insurance adjuster may divulge such information to an insurance company or its

representative which insures the insured, to the department of commerce and insurance, or upon a court order or an Internal Revenue Service subpoena.

(4) Where a public insurance adjuster is engaged or employed by a registered firm, the records required by this subsection may be maintained by such registered firm on behalf of the public insurance adjuster.

(k)

(1) Any license issued under this part may, after notice to the licensee, be suspended or revoked, and any application for a license may be denied, if the commissioner finds that the holder of or applicant for a license has:

(A) Willfully violated any provision of the Title or any rule or regulation promulgated by the commissioner;

(B) Intentionally made a material misstatement in an application for a license as a public insurance adjuster;

(C) Obtained or attempted to obtain a license as a public insurance adjuster through misrepresentation or fraud;

(D) Misappropriated, converted to his own use or improperly withheld money due others;

(E) Intentionally misrepresented the terms of any insurance policy;

(F) Used fraudulent, coercive or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the transaction of business as a public insurance adjuster;

(G) Been convicted of a felony;

(H) Knowingly transacted the business of a public insurance adjuster in conjunction with an individual who was not licensed at the time;

(I) Failed to appear without reasonable cause or excuse in response to a subpoena lawfully issued by the commissioner;

(J) A license as a public insurance adjuster suspended or revoked or an application denied in any other state, district, territory or province on a ground similar to one (1) of the grounds stated in this part;

(K) Failed to comply with or violated any of the standards set forth in subsection (i);

(L) Failed to maintain the records required by subsection (j); or

(M) Engaged in the unauthorized practice of law.

(2) Denial of an application pursuant to this subsection shall be written notice served upon the applicant by certified or registered mail sent to the address specified in the application.

(3) Upon notification of the issuance of an order suspending or revoking a public insurance adjuster's license, the licensee or other person having possession or custody of such license shall promptly deliver it to the commissioner in person or by mail. The commissioner shall publish the name of each public insurance adjuster whose license is suspended or revoked, after such suspension or revocation becomes final, in a manner designed to notify interested insurance companies and other persons.

(4) Any individual whose public insurance adjuster's license is revoked or whose application is denied pursuant to this part shall be ineligible to apply for a public insurance adjuster's license for two (2) years. A suspension pursuant to this part may be for any period up to two (2) years.

(l)

(1) The commissioner shall have the power to examine any applicant or any person licensed or registered pursuant to this part.

(2) Every person being examined and its officers, directors and members must provide to the commissioner convenient and free access at all reasonable hours, to all books, records, documents and other papers relating to its public insurance adjusting affairs. The officers, directors, members and employees must facilitate and aid in such examinations so far as it is in their power to do so.

(3) Examiners may be designated by the commissioner. Such examiners shall make their reports to the commissioner pursuant to this section. Any report alleging substantive violations shall be in writing and shall be based upon the facts ascertained from the books, records, documents, papers and other evidence obtained by the examiners or ascertained from the testimony of the officers, directors, members or other individuals examined under oath or ascertained by notarized affidavits received by the examiners. The report of examination shall be verified by the examiners.

(4) If a report is made, the commissioner shall cause the report to be delivered to the person being examined either in person or by certified or registered mail to the last known address specified in the records of the department of commerce and insurance. The commissioner must afford the person an opportunity to request a hearing with reference to the facts and other evidence and allegations therein contained. The person may request a hearing within fourteen (14) calendar days after receipt of the examination report by giving the commissioner written notice of such request, together with a written statement of its objections. The commissioner must conduct the hearing in accordance with the provisions of the Uniform Administrative Procedures Act,

compiled in title 4, chapter 5, and must issue a written order based upon the examination report and upon the hearing within ninety (90) days after the hearing. If the report is refused or otherwise undeliverable or a hearing is not requested within fourteen (14) days, the right to a hearing shall be deemed waived. After such hearing, if the examination reveals that the person is operating in violation of any law, regulation or prior order, the commissioner in the written order may require the person to take any action he or she considers necessary or appropriate in accordance with the report of examination.

(5) Any person who violates or aids and abets any violation of a written order issued pursuant to this subsection shall be guilty of a Class A misdemeanor and may be fined not more than five thousand dollars (\$5,000).

(m)

(1) The fees required by the part are as follows:

(A) Public insurance adjuster license annual fee, twenty-five dollars (\$25);

(B) Registration of firms, twenty-five dollars (\$25); and

(C) Application fee for processing each request to take the written examination for public insurance adjuster license, twenty-five dollars (\$25).

(n) Any person who acts as or holds himself or herself out to be a public insurance adjuster without holding a valid and current license to do so is hereby declared to be inimical to the public welfare and to constitute a public nuisance. The commissioner may report such practice to the attorney general of the state of Tennessee, whose duty it is to apply forthwith by complaint on relation of the commissioner in the name of the people of the state of Tennessee, as plaintiff, for injunctive relief in the courts of the county where such practice occurred to enjoin such

person from engaging in such practice; and, upon the filing of a verified petition in such court, the court, if satisfied by affidavit or otherwise that such person has been engaged in such practices without a valid and current license to do so, may enter a temporary restraining order without notice or bond, enjoining the defendant from such further practice. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is engaged in such unlawful practice, the court may enter an order of judgement perpetually enjoining the defendant from further such practice. In all proceedings hereunder the court, in its discretion, may apportion the costs among the parties interested in the action, including cost of filing the complaint, service of process, witness fees and expenses, court reporter charges and reasonable attorney fees. In case of violation of any injunctive order entered under the provisions of this subsection, the court may try and punish the offender for contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies.

(o) The commissioner may, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, adopt reasonable rules for the implementation and administration of the provisions of this part.

(p)

(1) The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall govern all matters and procedures respecting the hearing and judicial review of any "contested case," as defined in this title, arising under this part.

(2) The commissioner may authorize any regular salaried employee of the department to serve as an administrative judge or hearing officer in any contested case under this part.

(3) The commissioner may serve a notice or order in any contested case arising under this part by registered or certified mail to the licensee or applicants current address of record in the files of the department. Notwithstanding any provisions of the law to the contrary, service in the manner specified herein shall be deemed to constitute actual service on such licensee or applicant.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.